

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ELLMAX, INC. d/b/a ELLIS TOYOTA

and

Case ⁵ 31--CA--10756,

GUILLERMO DELEON, an Individual

and

31--CA--10927,
31--CA--11135

LARRY DARLINGTON, an Individual

SUPPLEMENTAL DECISION AND ORDER

On 7 March 1983 the National Labor Relations Board issued a Decision and Order ¹ in this proceeding in which the Board, inter alia, ordered the Respondent to make whole certain employees for their losses resulting from the Respondent's discrimination against them. On 8 December 1983 the United States Court of Appeals for the Ninth Circuit entered its judgment (No. 83--7379) enforcing the Board's Order. A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 31, on 27 March 1984, issued and, on 23 April 1984, served on the Respondent a backpay specification and notice of hearing. The specification alleged the amount of backpay due the employees under the Board's Order and notified the Respondent that a timely answer complying with the Board's Rules and Regulations should be filed. The Respondent failed to file an answer.

¹ 266 NLRB 442 (1983). Chairman Dotson and Member Hunter did not participate in the underlying case.

On 4 June 1984 the General Counsel filed directly with the Board in Washington, D.C., a Motion for Summary Judgment in accordance with the backpay specification. On 7 June 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent failed to file a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Fuling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued 27 March 1984 and served on the Respondent 23 April 1984, specifically states that the Respondent shall, within 15 days from the service of the specification, file an answer with the Regional Director for Region 31. The backpay specification further states that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them.

In addition to the backpay specification and notice of hearing, the General Counsel notified the Respondent by certified mail on 7 May 1984 that if the Respondent failed to answer the backpay specification within 15 days of service the General Counsel intended to move for summary judgment. The General Counsel's letter was returned by the Postal Service marked "unclaimed."

As of 4 June 1984, the date of the motion for Summary Judgment, the Respondent had not filed an answer. The Respondent also failed to file a response to the Notice to Show Cause. Therefore, the allegations of the Motion for Summary Judgment stand uncontroverted. As the Respondent has not filed an answer to the specification and has not offered any explanation for its failure to do so, in accordance with the rules set forth above, the allegations in the backpay specification are deemed to be admitted as true and the Board so finds.

Accordingly, the Board grants the Motion for Summary Judgment and concludes that the net backpay due discriminatees Guillermo DeLeon and Larry Darlington is as stated in the computations of the specification. The Board hereby orders that payment thereof be made by the Respondent as set forth below.

ORDER

The National Labor Relations Board orders that the Respondent, Filmax, Inc., d/b/a Ellis Toyota, Colton, California, its officers, agents, successors, and assigns, shall make whole the employees named below by payment to them of the amount set forth opposite their names, plus interest thereon as

computed in the manner prescribed in Florida Steel Corp., 231 NLRE 651
(1977),² minus tax withholdings required by Federal and state law.

Guillermo DeLeon \$11,814.35

Larry Darlington 58,802.29

Dated, Washington, D.C.

22 August 1984

Donald L. Dotson,

Chairman

Don A. Zimmerman,

Member

Robert P. Hunter,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² See generally Isis Plumbing Co., 138 NLRB 716 (1962).